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*Counsel for Piedad Murguia and Jose Santiago Murguia*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

PHP AGENCY, INC.,

Plaintiff,

v.

JOSE MARTINEZ aka TONY MARTINEZ,  
et al.,

Defendants.

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CIVIL ACTION NO.: 3:21-cv-00418-X

**MURGUIA DEFENDANTS’  
BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS**

**TO THE HONORABLE BRANTLEY STARR, UNITED STATES DISTRICT JUDGE:**

NOW COME defendants Piedad Murguia and Jose Santiago Murguia (collectively, the “Murguia Defendants”), by and through their undersigned counsel, submitting this brief (the “Brief”) in support of their *Motion to Dismiss Plaintiff’s Claims Set Forth in the First Amended Complaint* (the “Motion to Dismiss”) seeking dismissal of each and every one of the claims (collectively, the “Claims”) asserted against the Murguia Defendants in the *First Amended Complaint* [Docket No. 4] (the “Complaint”) filed by plaintiff PHP Agency, Inc. (“PHP” or “Plaintiff”). In support of the relief requested in the Motion to Dismiss, the Murguia Defendants respectfully state the following:

1. On April 13, 2021, defendants Tony Rojas, Pamela Krause, Peter Krause, Kasie Cameron-Perez, Mario Perez, and Eberardo Duarte (collectively, the “Contractor Defendants”) filed their *Motion to Dismiss Plaintiff’s Claims Set Forth in the First Amended Complaint* [Docket No. 23] and *Contractor Defendants’ Brief in Support of Their Motion to Dismiss* [Docket No. 24] (the “Contractor Defendants’ Brief,” attached hereto as **Exhibit 1**).

2. The Murguia Defendants are very similarly—if not identically—situated to the Contractor Defendants regarding each of PHP’s Claims. The Murguia Defendants hereby adopt, incorporate herein by reference, and rely on all of the arguments and legal authorities set forth in the Contractor Defendants’ Brief seeking dismissal of PHP’s Claims because they equally apply to the Murguia Defendants.

3. The Murguia Defendants, like the Contractor Defendants, (i) currently reside in California, (ii) were California residents at the time they allegedly entered into the purported *New Associate Agreement* (the “NAA”) with PHP, and (iii) they conduct their businesses in California, which includes, among other things, selling insurance products to California residents.<sup>1</sup> Therefore, similar to the Contractor Defendants, the Murguia Defendants and the Claims at issue in the case before this Court have a relationship far more significant to the State of California than to Texas. Additionally, the enforcement of the terms of the purported NAA—particularly the restrictive covenants—against the Murguia Defendants would violate California’s fundamental public policy against restraints on engaging in a profession. Specifically, the Murguia Defendants would be effectively banned from selling insurance to California residents in California for two years, despite having a license from the State of California to do so. As California residents, the Murguia

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<sup>1</sup> See Complaint ¶¶ 6-7.

Defendants are entitled to the public-policy-based protections that their home state affords its residents. As a result, PHP's Claims against the Murguia Defendants are due to be dismissed.

2. PHP fails to state a claim against the Murguia Defendants upon which relief can be granted for each of the nine counts alleged in the Complaint because PHP failed to plead with sufficient particularity enough facts to state a claim for relief that is plausible on its face. PHP has done little more than provide generic conclusory statements in support of each of its claims, with virtually no facts specifically related to the alleged actions of the Murguia Defendants. The same arguments outlined in the Contractor Defendants' Brief related to PHP's failure to meet federal pleading standards for each of its nine claims also apply to the Murguia Defendants. This Court should not accept allegations from PHP that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences and, therefore, PHP's Claims against the Murguia Defendants are due to be dismissed.

For the foregoing reasons, this Court should grant the Murguia Defendants' Motion to Dismiss, and PHP's Complaint should be dismissed in its entirety.

Dated: April 19, 2021.

Respectfully submitted,

**HAYWARD PLLC**

/s/ Zachery Z. Annable

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**CERTIFICATE OF SERVICE**

I hereby certify that, on April 19, 2021, a true and correct copy of the foregoing Brief was served electronically upon (i) counsel for Plaintiff PHP Agency, Inc., via the Court's CM/ECF system and (ii) upon all parties registered to receive electronic notice via the Court's CM/ECF system.

/s/ Zachery Z. Annable  
Zachery Z. Annable